

CLERK'S OFFICE U.S. DIST. COURT
AT ROANOKE, VA
FILED

SEP 17 2019

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
(CHARLOTTESVILLE DIVISION)JULIA C. DUDLEY, CLERK
BY: *A. Seagle*
DEPUTY CLERK

ROTHY'S, INC.,

Plaintiff,

v.

JKM TECHNOLOGIES, LLC d/b/a/ OESH SHOES

&

DR. CASEY KERRIGAN d/b/a OESH SHOES,

Defendants.

Civil Action No. 3:18CV00067 (MFU)

CONSENT DECREE

Pursuant to a Confidential Settlement Agreement and Release between the parties dated September 13, 2019 (the “Settlement Agreement”), the parties have filed a joint motion for the entry of a Consent Decree. Finding that it is in the interests of justice to do so, the Court GRANTS the joint motion, and further ORDERS as follows:

1. Plaintiff Rothy’s, Inc. (“Rothy’s”) asserts that certain shoes marketed and sold under the name “The Dream Flat” by Defendants JKM Technologies, LLC d/b/a/ OESH Shoes and Dr. Casey Kerrigan d/b/a OESH Shoes (collectively “Defendants”) as defined and depicted in Rothy’s Amended Complaint in this action (the “Accused Design”): (1) infringe United States Design Patent Nos. D768,366, D804,156, D805,276, D831,325, D833,729, and D836,314 (the “Rothy’s Design Patents”); and (2) infringe the signature round toe with a distinctive pointed vamp, seamless 3D knitted upper, slim profile and sleek outsole of The Flat product constituting the trade dress of Rothy’s The Flat product (the “Rothy’s Trade Dress”) under § 43(a) of the Lanham Act; and (3) have committed (and continue to commit) unfair competition and false designation of origin in violation of the Lanham Act.

2. Defendants denied all claims and liability and asserted counterclaims against Rothy’s in this action challenging the validity and enforceability of the Rothy’s Design Patents and the Rothy’s Trade Dress and Defendants’ alleged infringement thereof.

3. Without admitting any fault or liability, Defendants have agreed, as part of the Settlement Agreement, to the entry of a Consent Decree whereby Defendants: (a) acknowledge the validity of the Rothy’s Design Patents and the Rothy’s Trade Dress for purposes of this action; (b) are enjoined from manufacturing, marketing and selling the Accused Design after December 31, 2019, for the remaining term of the Rothy’s Design Patents and the Rothy’s Trade

Dress; and (c) introduce and announce the Redesigned Dream Flat, which Rothy's agrees does not infringe the Rothy's Design Patents or the Rothy's Trade Dress or violate any other alleged rights Rothy's may have, by October 15, 2019, pursuant to the terms and conditions of the Settlement Agreement.

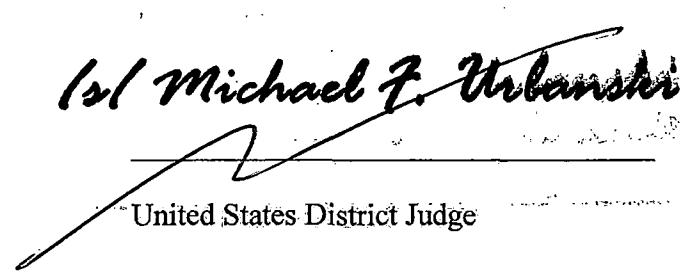
4. Accordingly, the Court ORDERS that Defendants: (a) are enjoined from manufacturing, marketing and selling the Accused Design after December 31, 2019, for the remaining term of the Rothy's Design Patents and the Rothy's Trade Dress; and (b) are required to introduce and announce the Redesigned Dream Flat, which Rothy's agrees does not infringe the Rothy's Design Patents or the Rothy's Trade Dress or violate any other alleged rights Rothy's may have, by October 15, 2019.

5. All claims against Defendants are dismissed with prejudice. Notwithstanding the dismissal of this action, the parties further agree that this Court shall retain exclusive personal and subject matter jurisdiction to enforce the terms of this Consent Decree and the terms of the Settlement Agreement entered into by the parties in connection herewith.

6. Each party shall bear its attorney fees and costs incurred in connection with this matter.

It is so ORDERED.

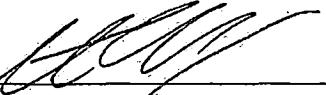
Date: September 17, 2019


United States District Judge

ROTHY'S, INC.

JKM TECHNOLOGIES, LLC d/b/a OESH
SHOES

By: _____

By: 

Printed Name: _____

Printed Name: ROBERT A. Kusyk

Title: _____

Title: CEO

Date: _____

Date: 09.12.19

DR. CASEY KERRIGAN

By: 

Printed Name: D. Casey Kerrigan, MD

Title: Chairman

Date: 9/12/2019

ROTHY'S, INC.*Dayna Quanbeck*

By: _____

Printed Name: Dayna QuanbeckTitle: Chief Financial OfficerDate: September 12, 2019**JKM TECHNOLOGIES, LLC d/b/a OESH
SHOES**

By: _____

Printed Name: _____

Title: _____

Date: _____

DR. CASEY KERRIGAN

By: _____

Printed Name: _____

Title: _____

Date: _____